

REMARKS/ARGUMENTS

Claims 1-3 appear in the present application. Claim 1 is amended to convert the claim from a "Use" claim to a method claim. Claim 2, which is directed to a composition, has been amended to refer to the compositions "recited in" (rather than "claimed in") claim 1. The amendments to claims 1 and 2 are supported by the application as filed and thus do not raise any issue of new matter. Claim 3 has been canceled without prejudice or disclaimer of applicants' right to pursue patent protection for the subject matter of this claim in another application in light of the amendment to claim 1. The Examiner is respectfully requested to reconsider and withdraw the rejections set forth in the present Office Action in light of the amendments and arguments presented herein.

Amendments of the Specification

The Examiner stated in the Office Action that it is unclear why the amendment made in Table B is only for compound 102. The Examiner stated that all of the other compounds contain A1 as a substituted phenyl group. The Examiner stated that all of the compounds where A1 represents substituted phenyl are not enabled. The Examiner has requested clarification.

In response, applicants submit that they have now amended the entries for compounds 101 and 103-126 in Table B to correspond to the amendment previously made for compound 102. This amendment has been made to correct an obvious typographical error which was repeated in each of these entries wherein "phenyl" now has been corrected to "pyridyl". This change is entirely supported by the specification as filed and thus there is no issue of new matter. In particular, support for this change is found, *inter alia*, in the specification on page 1, line 12 wherein A¹ is defined as "2-**pyridyl** or its N-oxide" (emphasis supplied by applicants). Entry of the amendments to Table B is therefore respectfully requested.

Claim Rejections

Claim 1 is rejected under 35 U.S.C. §101 as being directed to nonstatutory subject matter. The Examiner stated that claim 1 is a "use" claim, but that "use" is not one of the statutory classes of invention. The Examiner suggested to re-write claim 1 to be like claim 3 of the application

In response to this rejection, applicants have amended claim 1 such that it is now directed to a method of combating pests at a locus infested or liable to be infested therewith, as was original claim 3. Methods are one of the statutory classes of invention and applicants therefore respectfully request the Examiner to reconsider and withdraw the rejection of claim 1 under §101. Moreover, in view of the amendment to claim 1, applicants have canceled claim 3 without prejudice or disclaimer.

Further to the above, claims 1-3 are rejected under 35 U.S.C. §112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention. In particular, The Examiner notes that it is unclear what "comprising at least one compound as claimed in claim 1" is in claims 2 and 3 because claim 1 is not a compound claim. Applicants note that claim 2 has been recited such that it now recites "at least one compound as recited in claim 1" (emphasis supplied). Applicants acknowledge that claim 1 is not a method claim, but it certainly does **recite** a plurality of compositions useful in the method now recited in claim 1. Applicants submit that, as amended, claim 2 overcomes the rejection based on 112, paragraph 2 and the Examiner is therefore respectfully requested to reconsider and withdraw the subject rejection. As to claim 3, applicants submit that the cancellation of this claim renders its rejection under §112, ¶2 moot.

The Examiner further stated in the Office Action that claim 1 (as originally presented) provides for the use of compounds of formula I but does not set forth any steps. The Examiner stated that a claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

As noted above, claim 1 has now been converted from a “use” claim to a claim specifically reciting a method of combating plant pests at a locus infested or liable to be infested with such pests. The method, as recited in the claim, comprises applying to the locus a sufficient amount of a phytopathogenic fungicide to combat the plant pests. The claim additionally defines the fungicide as comprising a compound of the general formula I or one of its salts. Applicants submit that the above-described amendments are believed to overcome the grounds for rejection of claim 1 under §112, paragraph 2, and the Examiner is respectfully requested to reconsider and withdraw the rejection of this claim.

Specie Election

The Examiner stated that claims 1-3 are directed to a subgenus of the elected species. He states that lack of unity exists because the claims are directed to more than 1 specie (actually to more than a thousand species) of the generic invention. The Examiner states that these species are deemed to lack unity because they are not so linked to form a single inventive concept under PCT Rule 13.1.

In response, applicants urge that the molecular structures of the compounds recited in the subject claims have molecular structures with sufficient commonality to be prosecuted in a single application without subjecting the Examiner to an undue burden.


Summary

Claims 1-2, as amended, are believed to be in condition for allowance and thus issuance of a Notice of Allowance for the subject claims is respectfully solicited.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants invite the Examiner to telephone their representative at the number provided below.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on May 26, 2004:
William O. Gray III

Name of applicant, assignee or
Registered Representative

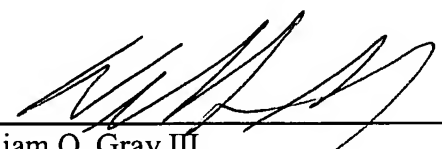


Signature

May 26, 2004

Date of Signature

Respectfully submitted,



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